

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GARY W. ALEXANDER & DIANE M.
ALEXANDER, husband and wife and
the marital community composed
thereof,

Plaintiffs,

v.

DEUTSCHE BAN NATIONAL TRUST
COMPANY AS TRUSTEE FOR
HARBORVIEW MORTGAGE LOAN
TRUST 2007-7, AND AS TRUSTEE OF
DLSA MORTGAGE LOAN TRUST
2006-AR1, a foreign corporation, et al.

Defendants.

NO: CV-12-5148-RMP

ORDER DISMISSING ACTION SUA
SPONTE FOR LACK OF SUBJECT
MATTER JURISDICTION

This action was filed on Friday, November 2, 2012. ECF No. 1.

Contemporaneously with the complaint, the Plaintiffs filed a motion for a
temporary restraining order seeking to enjoin a trustee sale scheduled to proceed
on Friday, November 9, 2012. ECF No. 2. The Court has reviewed all filings and
is fully informed.

ORDER DISMISSING ACTION SUA SPONTE FOR LACK OF SUBJECT
MATTER JURISDICTION ~ 1

1 The complaint alleges three state-law causes of action: (1) wrongful
2 foreclosure under Washington law; (2) violation of the Washington State
3 Consumer Protection Act; and (3) a declaratory judgment action to quiet title to the
4 subject property and to interpret loan agreements. ECF No. 1 at 7-9.

5 The complaint asserts diversity of the parties as the basis of subject matter
6 jurisdiction in this Court. Federal district courts have subject matter jurisdiction
7 over “all civil actions where the matter in controversy exceeds the sum or value of
8 \$75,000, exclusive of interest and costs, and is between . . . citizens of different
9 States.” 28 U.S.C. § 1332(a). “Diversity jurisdiction requires complete diversity
10 between the parties—each defendant must be a citizen of a different state from
11 each plaintiff.” *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1234
12 (9th Cir. 2008) (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806)).

13 The Plaintiffs are alleged to be residents of Washington. ECF No. 1 at 1-2.
14 The Defendants listed in the caption are all alleged to be corporations organized
15 under the laws of states other than Washington.¹ ECF No. 1 at 2. Despite the
16 requirements of Federal Rule of Civil Procedure 10(a), Northwest Trustee
17 Services, Inc., (“NWTS”) is listed as a party in the body of the complaint but is not
18 listed in the caption. However, the caption is not controlling, and a court “may

19 ¹The Court notes that the complaint fails to allege the principal places of
20 business for those corporate defendants listed in the caption.

1 consider a complaint to have named the proper defendant ‘if the allegations made
2 in the body of the complaint make it plain that the party is intended as defendant.’”
3 *Barsten v. Dep’t of Interior*, 896 F.2d 422, 423 (9th Cir. 1990) (quoting *Rice v.*
4 *Hamilton Air Force Base Commissary*, 720 F.2d 1082, 1085 (9th Cir. 1983)). As
5 NWTs is the target of the Plaintiff’s motion for a temporary restraining order, the
6 Court concludes that NWTs is a defendant in this action.

7 NWTs is alleged to be a Washington corporation with its principal place of
8 business in Bellevue, Washington. ECF No. 1 at 2. As the Plaintiffs are also
9 alleged to be residents of Washington, the complaint fails to establish complete
10 diversity of the parties. Diversity is the only basis of jurisdiction alleged in the
11 complaint. The three causes of action alleged in the complaint all raise issues of
12 state law. Accordingly, the complaint fails to establish a basis for this Court to
13 assert subject matter jurisdiction over the case.

14 Accordingly, **IT IS HEREBY ORDERED:**

- 15 1. The above-caption case is **DISMISSED WITHOUT PREJUDICE** for
16 lack of subject matter jurisdiction.
17 2. Costs and fees shall not be charged to any party.

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The District Court Executive is hereby directed to enter this Order and to provide copies to counsel and to **close** this file.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge